

DIPLOMATIC IMMUNITY AND THE ABUSE OF DOMESTIC WORKERS: CRIMINAL AND CIVIL REMEDIES IN THE UNITED STATES

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TABLE OF CONTENTS

INTRODUCTION	596
I. CRIMINAL REMEDIES: ORDERLY DIPLOMACY V. CRIMINAL ACCOUNTABILITY	598
A. <i>U.S. v. Khobragade</i> : An Anomaly, Not the Rule	603
B. Post- <i>Khobragade</i> Accountability Cold Feet? Implications for Criminal Prosecution of Diplomats and Foreign Officials for Human Trafficking	605
1. <i>U.S. v. Amal</i>	607
2. <i>U.S. v. Al Homoud</i>	608
II. THE RISE OF CIVIL LITIGATION FOR DOMESTIC WORKERS ABUSED BY DIPLOMATS	610
A. Immigration Relief and Civil Litigation	611
B. Post- <i>Swarna</i> : Residual Immunity and the End of Futility	611
C. The Road Not Taken: Civil Cases Without Indictments	614
1. <i>Waru v. Madhvani</i>	614
2. <i>Sabbithi v. Al Saleh</i>	615
3. <i>Leo v. Al Naser</i>	616
4. <i>Lipenga v. Kambalame</i>	618
5. <i>Rana v. Islam</i>	618
III. HOLDING STATES ACCOUNTABLE	619
A. The Special Problem of Unpaid Default Judgments	620
1. <i>Carazani v. Zegarra</i>	621
2. <i>Butigan v. Al-Malki</i>	622

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3. <i>Ballesteros v. Al-Ali</i>	622
B. Host State Liability	623
C. International Coordination	624
CONCLUSION	625
APPENDIX A: FEDERAL CRIMINAL TRAFFICKING CASES INVOLVING DIPLOMATS, CONSULAR OFFICIALS, INTERNATIONAL ORGANIZATION OFFICIALS, MILITARY OFFICIALS, AND OTHER	625
APPENDIX B: FEDERAL CIVIL TRAFFICKING CASES INVOLVING DIPLOMATS, CONSULAR OFFICIALS, INTERNATIONAL ORGANIZATION OFFICIALS, MILITARY OFFICIALS, AND OTHER	630

INTRODUCTION

Trafficking of domestic workers by diplomats and international organization employees is not a new phenomenon.¹ In a 1981 State Department diplomatic note issued to all embassies in the United States, the Secretary of State expressed “deep concern . . . over the evidence that some members of diplomatic missions have seriously abused or exploited household servants who are in the United States under nonimmigrant A-3

1. Abuse of domestic workers by diplomats has been a perennial problem. For additional resources examining trafficking and abuse of domestic workers, *see generally* HUMAN RIGHTS WATCH, HIDDEN IN THE HOME: ABUSE OF DOMESTIC WORKERS WITH SPECIAL VISAS IN THE UNITED STATES (2001), <https://www.hrw.org/reports/2001/usadom/usadom0501.pdf>; Janie A. Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 88 N.C. L. REV. 1627 (2010); TIFFANY WILLIAMS, NAT’L DOMESTIC WORKER’S ALL., BEYOND SURVIVAL: ORGANIZING TO END HUMAN TRAFFICKING OF DOMESTIC WORKERS (2015), http://www.domesticworkers.org/sites/default/files/beyond_survival_campaign_report_full_final.pdf?sid=58750; BAN YING, FEMALE DOMESTIC WORKERS IN THE PRIVATE HOUSEHOLDS OF DIPLOMATS IN THE FEDERAL REPUBLIC OF GERMANY (2003), <https://www.yumpu.com/en/document/view/10485657/cedaw-englkomplett-bei-ban-ying>; ANGELIKA KARTUSCH, GERMAN INST. FOR HUMAN RIGHTS, DOMESTIC WORKERS IN DIPLOMATS’ HOUSEHOLDS: RIGHTS VIOLATIONS AND ACCESS TO JUSTICE IN THE CONTEXT OF DIPLOMATIC IMMUNITY (2011), http://lastradainternational.org/Isidocs/domestic_workers_in_diplomats_households.pdf; JENNY MOSS, KALAYAAN, SUBMISSION TO THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF SLAVERY (2010), http://www.kalayaan.org.uk/wp-content/uploads/2014/09/SR-contemporary-forms-of-slavery-Kalayaan-submission-final_names-now-deleted-for-publication_.pdf; ORG. FOR SEC. & CO-OPERATION IN EUR. [OSCE] OFFICE FOR THE SPECIAL REP. & CO-ORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, HOW TO PREVENT HUMAN TRAFFICKING FOR DOMESTIC SERVITUDE IN DIPLOMATIC HOUSEHOLDS AND PROTECT PRIVATE DOMESTIC WORKERS (2014), http://www.osce.org/handbook/domestic_servitude?download=true; Nivedita Prasad, *Domestic Workers Working for Diplomats*, in KOK, TRAFFICKING IN WOMEN IN GERMANY, at 92 (2008), http://www.kokbuero.de/fileadmin/user_upload/medien/kok_flyer_brosch/KOK_Brosch_2008_englisch.pdf; Gulnara Shahinian (Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences), *Rep. of the Special Rapporteur*, U.N. Doc. A/HRC/15/20 (June 18, 2010).

visas.”² The diplomatic note stated that the Department of State would “look to each mission to take appropriate measures to ensure that domestic employees of their staff members are treated fairly and equitably.”³ The State Department note went on to promise that “[v]erified instances of abuse will be dealt with effectively.”⁴

Thirty-five years after the State Department’s expression of “deep concern,” does the United States deal “effectively” with diplomatic abuse of domestic workers? The State Department does get high marks for improvement. The State Department deals with this abuse *more* effectively than it did before 2008 that was the year that Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act. Analysis of the criminal dockets following the 2008 Act’s passage reveals that the United States government has ramped up federal enforcement measures to protect domestic workers brought to the United States by diplomats and foreign officials.

These more aggressive enforcement measures reflect the State Department’s realization that “look[ing] to each mission” to ensure fair treatment of domestic workers is insufficient.⁵ But there is far more work to be done. Analysis of the federal civil dockets reveals that many diplomatic trafficking cases are never criminally prosecuted.⁶ These cases *could* be filed in the federal courts as civil cases thanks to a 2003 amendment to the Trafficking Victims Protection Act—18 U.S.C. § 1595. That amendment created a federal civil right of action for trafficking crimes, providing domestic workers an avenue for relief, even in the absence of a federal

2. Letter from Gilda Brancato, Office of the Legal Adviser, Diplomatic Law & Litig. Div., U.S. Dep’t of State, (Oct. 23, 1990) (citing diplomatic note of 1981) (on file with authors). A-3 and G-5 visas are reserved for domestic employees of diplomats and International Organization (I.O.) officials. *See infra* note 12.

3. *Id.*

4. *Id.*

5. *Id.* In 2015, the State Department issued a Diplomatic Note announcing the launch of an “annual in-person registration process for domestic workers employed by foreign mission personnel” in the Washington, D.C. area. Diplomatic Note, U.S. Dep’t of State, Annual Review of Domestic Workers (Sept. 25, 2015), <http://www.state.gov/s/cpr/248451.htm>. It is hoped that these annual check-ins will deter abuse of domestic workers by diplomats and international organization officials.

6. Of 28 federal civil trafficking cases brought by A-3 and G-5 visa holders, only four had corresponding criminal prosecutions. *See* United States v. Penzato, No. 3:12-cr-00089 (N.D. Cal Feb. 9, 2012); United States v. Amal, Nos. 1:14-cr-00151, 1:14-cr-00152 (E.D. Va. Mar. 4, 2014); United States v. Bakilana, No. 1:10-cr-00093 (E.D. Va. Mar. 29, 2010); United States v. Al-Ali, No. 1:11-cr-00051 (D.R.I. Mar. 30, 2011). Civil settlements were also reached for victims in the *Al Homoud* criminal case, but no civil complaint was filed. Transcript of Sentencing Hearing at 12–13, United States v. Al-Homoud, No. 5:15-cr-00391 (W.D. Tex. Feb. 9, 2016).

criminal prosecution.⁷ But, since 2003, domestic workers have filed only twenty-eight civil cases against diplomats and other international officials in U.S. federal courts.⁸ It is likely that the actual number of domestic workers trafficked by diplomats and international officials is much higher.⁹

This Article analyzes the U.S. government's role in building effective civil and criminal remedies for domestic workers abused by diplomats and international organization employees. Thus far, the record is mixed. Part I discusses the tension between criminal accountability and diplomatic relations. Part II explores the rise of civil litigation as an alternative means of accountability. Part III describes how advocates in the United States and other countries are working to hold both host and sending states accountable.

I. CRIMINAL REMEDIES: ORDERLY DIPLOMACY V. CRIMINAL ACCOUNTABILITY

The United States is one of a few countries that prosecutes diplomats and other foreign officials for abuse and trafficking of domestic workers. In most countries, these cases are relegated to voluntary mediation panels or employment tribunals, if they are pursued at all.¹⁰ But even in the United States, criminal prosecutions are rare. Criminal cases are most frequently brought against officials with lesser degrees of immunity, such as consular

7. The 2003 amendment created “a right of civil action by aggrieved persons so that there is at least that remedy open to a woman or a man who has been trafficked.” *Global Trends in Trafficking and the “Trafficking in Persons Report”*: Hearing Before the Subcomm. on Int’l Terrorism, Nonproliferation and Human Rights of the H. Comm. on Int’l Relations, 108th Cong. 31 (2003) (statement of Rep. Christopher Smith).

8. Plaintiffs filed all but one of the 28 cases under 18 U.S.C. § 1595. The remaining case, which predated passage of the statute, was filed under the Alien Tort Statute. In all, 172 civil trafficking cases have been filed by trafficking victims under § 1595 since 2003. This number does not include multiple cases filed separately by individual victims against the same defendant arising out of the same fact pattern. See *Federal Civil Human Trafficking Case Database*, HUMAN TRAFFICKING PRO BONO LEGAL CTR., <http://www.htprobono.org/resources/> (last visited June 26, 2016) (access to the password protected database may be requested by emailing info@htprobono.org).

9. The most recent count of this population, a 2008 U.S. Government Accountability Office (GAO) report, identified 42 alleged cases of diplomatic abuse of domestic workers between 2000 and 2008. The report noted that the actual number was “likely higher.” U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-892, U.S. GOVERNMENT’S EFFORTS TO ADDRESS ALLEGED ABUSE OF HOUSEHOLD WORKERS BY FOREIGN DIPLOMATS WITH IMMUNITY COULD BE STRENGTHENED 1 (2008). Advocates fighting for the rights of domestic workers abused by diplomats maintain that this is an ongoing problem. See WILLIAMS, *supra* note 1, at 60–65.

10. See KARTUSCH, *supra* note 1, at 54. Because of the innate power imbalances between diplomats and their domestic workers, these “voluntary” mediation programs appear to result in small settlements for domestic workers harmed by diplomats. See *id.* at 53–54.

immunity.¹¹ Federal prosecutors have also indicted in cases involving former diplomats.¹² And, in very rare instances, the U.S. has requested a waiver of diplomatic immunity to prosecute an individual with full immunity under the Vienna Convention on Diplomatic Relations.¹³ In all, since passage of the Trafficking Victims Protection Act in 2000, the U.S. has brought nine criminal cases against diplomats and international organization officials for trafficking-related crimes.¹⁴

The inadequacy of the government's criminal enforcement efforts may be traceable to a troubling conundrum that lurks at the heart of diplomatic relations. The State Department is charged with "advanc[ing] U.S. objectives and interests in shaping a freer, more secure, and more prosperous world through its primary role in developing and implementing the President's foreign policy."¹⁵ Prosecuting diplomats stationed in the United States for their crimes would certainly enhance the rule of law. But it presents a danger of severely disrupting the orderly implementation of the President's foreign policy. No case illustrates this dilemma more vividly than *U.S. v. Khobragade*, a 2014 case from the Southern District of New York.

On December 12, 2013, U.S. Diplomatic Security Service¹⁶ agents arrested Deputy Consul General of India Devyani Khobragade in

11. See *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. Jun. 1, 2015) (military official); *United States v. Khobragade*, No. 1:14-cr-00176 (S.D.N.Y. Mar. 14, 2014) (consulate official then diplomat); *United States v. Amal*, Nos. 1:14-cr-00151, 1:14-cr-00152 (E.D. Va. Mar. 4, 2014) (former diplomat with residual immunity for official acts); *United States v. Penzato*, No. 3:12-cr-00089 (N.D. Cal Feb. 9, 2012) (consular official); *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012) (diplomat); *United States v. Liu*, No. 4:11-cr-00284 (W.D. Mo. Nov. 18, 2011) (international official); *United States v. Al-Ali*, No. 1:11-cr-00051 (D.R.I. Mar. 30, 2011) (military official); *United States v. Tolan*, No. 1:11-cr-00536 (E.D. Va. Nov. 23, 2011) (embassy employee—diplomatic status unknown); *United States v. Bakilana*, No. 1:10-cr-00093 (E.D. Va. Mar. 29, 2010) (World Bank employee). See also Appendix A.

12. See *United States v. Amal*, Nos. 1:14-cr-00151, 1:14-cr-00152 (E.D. Va. Mar. 4, 2014) (indictment filed against the former defense attaché at the Moroccan Embassy to the United States). The cases cited here involve defendants who brought domestic workers to the United States on A-3 or G-5 visas. These visa categories are reserved only for the domestic employees of foreign officials. 8 U.S.C. § 1375c (2012). The presence of domestic workers with these visas in the homes of these defendants indicates that (a) the defendants retained some official status to qualify for domestic worker visas; or (b) the defendants obtained the domestic worker visa fraudulently, perhaps relying on contacts in the diplomatic community to submit false applications.

13. See Vienna Convention on Diplomatic Relations Art. 32, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Diplomatic waivers have been requested in just two cases: *Khobragade* and *Soborun*.

14. See *supra* note 11.

15. See generally *Department Organization*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/rls/dos/436.htm> (last visited Apr. 15, 2016).

16. The Diplomatic Security Service (DSS) is the law enforcement arm of the Department of State. In 2011, then-Secretary of State Hillary Clinton ordered the creation of a special anti-trafficking

Manhattan. The original, sealed criminal complaint alleged that Khobragade had made false statements to obtain a visa for her domestic worker and then failed to pay the worker in accordance with U.S. minimum wage standards.¹⁷ In the weeks that followed, the case exploded into a full-blown diplomatic incident, dominating headlines in India and in the United States.¹⁸ Indian government officials insisted—erroneously—that Khobragade enjoyed full diplomatic immunity as a consular officer.¹⁹ When that failed, the Indian government reassigned Khobragade to the Indian Mission to the United Nations.²⁰ The human rights community derided this transparent attempt to cloak Khobragade with diplomatic immunity. Advocates pressured the Obama administration to deny Khobragade’s reaccreditation to the United Nations, issuing a Change.org petition that garnered 89,616 signatures.²¹ On January 8, 2014, Secretary of State Kerry approved Khobragade’s transfer.²² Khobragade was granted full diplomatic immunity on January 8, 2014.²³ She departed the United States approximately 24 hours later, on the evening of January 9, 2014.²⁴

On January 9, 2014, prior to Khobragade’s departure, a federal grand jury returned an indictment.²⁵ The counts included visa fraud and providing

unit within the agency. Hillary Rodham Clinton, Sec’y of State, Remarks at the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (Feb. 1, 2011), <http://m.state.gov/md155831.htm>. Since the launch of the unit, DSS has spearheaded multiple human trafficking investigations against diplomats in the United States.

17. Sealed Complaint at 1, *United States v. Khobragade*, No. 1:13-MJ-02870-UA (S.D.N.Y. Dec. 11, 2013). The complaint alleged violations of 18 U.S.C. §§ 1001, 1546(a) and 2. *Id.* at 1–2.

18. See, e.g., Gardiner Harris, *Outrage in India, and Retaliation, Over a Female Diplomat’s Arrest in New York*, N.Y. TIMES (Dec. 17, 2013), <http://www.nytimes.com/2013/12/18/world/asia/outrage-in-india-over-female-diplomats-arrest-in-new-york.html>.

19. *Id.*

20. John Bellinger, *The Khobragade Kerfuffle: An Assessment*, LAWFARE (Jan. 12, 2014 2:42 PM), <https://www.lawfareblog.com/khobragade-kerfuffle-assessment>.

21. See, e.g., Nat’l Domestic Workers Alliance, *Secretary Kerry and President Obama: Don’t Give Khobragade a “Free Pass” for Labor Exploitation in the United States*, CHANGE.ORG, <https://www.change.org/p/secretary-kerry-and-president-obama-don-t-give-khobragade-a-free-pass-for-labor-exploitation-in-the-united-states> (last visited Apr. 15, 2016).

22. Khobragade was appointed a Counselor to the Permanent Mission of India to the United Nations, a position that provided her with full diplomatic immunity. *United States v. Khobragade*, 15 F. Supp. 3d 383, 384–87 and 384 n.6 (S.D.N.Y. 2014). As John Bellinger, former Legal Adviser at the State Department, pointed out at the time, allowing India to reassign Ms. Khobragade from India’s Consulate in New York to India’s Mission to the UN provided her with diplomatic immunity. Bellinger, *supra* note 20.

23. See Letter from Eileen P. Merritt, Minister Counselor at the United States Mission to the United Nations, to Devyani Khobragade (Jan. 8, 2014) (“Merritt Letter”), Ex. F to Memorandum of Law of the United States of America in Opposition to Defendant’s Motion to Dismiss Indictment, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Jan. 31, 2014).

24. *Khobragade*, 15 F. Supp. 3d at 386.

25. Indictment, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Jan. 9, 2014).

false statements to the U.S. government.²⁶ Unfortunately, when the indictment issued, Khobragade was still in the United States, protected by her newly-minted diplomatic status. Absent a waiver of immunity from the Indian government, Khobragade was shielded from prosecution.²⁷ The State Department requested the waiver of immunity on January 9, 2014. India denied the request.²⁸ The United States government requested Khobragade's immediate departure from the United States.²⁹ Khobragade's lawyers moved to dismiss the indictment.³⁰

Judge Shira Sheindlin ruled on March 12, 2014 that Khobragade's diplomatic immunity required dismissal of the January 9, 2014 indictment.³¹ Judge Sheindlin's decision stated that "[e]ven if Khobragade had no immunity at the time of her arrest and has none now, her acquisition of immunity during the pendency of proceedings mandates dismissal."³² The indictment re-issued on March 14, 2014, two days after the dismissal.³³ It remains valid. Khobragade is an international fugitive.³⁴ Khobragade is therefore subject to arrest upon her return to the United States.

26. *Id.* at 384; Ishaan Tharoor, *After Khobragade: Can U.S.-India Relations Recover?*, TIME (Jan. 13, 2014), <http://world.time.com/2014/01/13/khobragade-us-india-diplomacy/>. Although the initial indictment did not charge Khobragade with human trafficking, all federal reporting subsequently has characterized the matter as a trafficking case. *See, e.g.*, U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS – FISCAL YEAR 2014, 138 (2015), <http://www.justice.gov/ag/file/799436/download>.

27. *See Khobragade*, 15 F. Supp. 3d at 388.

28. *Id.* at 384.

29. *See* Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Mission of India (Jan. 9, 2014), Exhibit G to Memorandum of Law of the United States of America in Opposition to Defendant's Motion to Dismiss Indictment, *United States v. Khobragade*, 15 F. Supp. 3d 383 (S.D.N.Y. 2014) ("The United States Mission has received the Permanent Mission [of India]'s note of January 9th declining to waive the immunity of Dr. Khobragade, and accordingly this Mission requests her immediate departure from the United States.").

30. *See generally* Memorandum of Defendant in Support of Motion to Dismiss, *United States v. Khobragade*, No. 14-Cr.-0008 (SAS), 2014 WL 2994113 (S.D.N.Y. Jan. 14, 2014). Diplomatic immunity is designed to protect institutions, not individuals.

31. Opinion and Order, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Mar. 12, 2014).

32. *Khobragade*, 15 F. Supp. 3d at 388. For a full discussion of the Vienna Convention on Consular Relations and the Khobragade case, see Irina Kotchach Bleustein, *Achieving the Coexistence of Accountability and Immunity: The Prosecution of Devyani Khobragade and the Role of Consular Immunity in Criminal Cases*, 52 AM. CRIM. L. REV. 355 (2015).

33. Indictment, *United States v. Khobragade*, No. 1:14-cr-00176 (S.D.N.Y. Mar. 14, 2014).

34. Poonam Agarwal, *"I Feel Arrested in My Own Country," Says Devyani Khobragade*, QUINT (Feb. 5, 2016), <http://www.thequint.com/india/2016/02/05/i-feel-arrested-in-my-own-country-says-devyani-khobragade>. The U.S. Marshals Service defines international fugitives as individuals "wanted in the United States who have fled to foreign countries to avoid prosecution or incarceration."

Unfortunately, the focus on Ms. Khobragade's arrest and the ensuing firestorm obscured the facts giving rise to the indictment. Ms. Khobragade allegedly forced her domestic worker to toil long hours for approximately \$1.22 per hour.³⁵ That wage, which violated federal minimum wage laws,³⁶ also violated the contract Khobragade had signed with the domestic worker in India.³⁷ The contract initially submitted to U.S. consular officials to obtain the domestic worker's visa complied with U.S. legal requirements, including wage laws.³⁸ After the domestic worker obtained her A-3 domestic worker visa and arrived in the U.S., however, Khobragade allegedly forced her to sign a second, illegal employment contract.³⁹ The Department of State Trafficking in Persons Report published in 2014 referred to the *Khobragade* case as a trafficking case.⁴⁰

The *Khobragade* indictment was the third case of alleged trafficking in the Indian consulate in New York.⁴¹ Trafficking victims had previously filed two civil cases against Indian consular officials in New York.⁴² One, against the Indian Consul General, ended in an undisclosed settlement.⁴³

International Investigations, U.S. MARSHALS SERV., <http://www.usmarshals.gov/investigations/international/> (last visited Apr. 17, 2016).

35. Indictment at 7, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Jan. 9, 2014).

36. The current federal minimum wage for covered nonexempt employees is \$7.25 per hour. 29 U.S.C. § 206(a)(1) (2012).

37. Fake Employment Contract, Exhibit E to Indictment, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Jan. 9, 2014) (stipulating that the victim would receive an hourly wage of \$9.75).

38. *Id.*

39. Sealed Complaint at 9, *United States v. Khobragade*, No. 1:13-mj-02870 (S.D.N.Y. Dec. 11, 2013). Amendments to the Trafficking Victims Protection Act in 2008 created “[p]rotections, remedies, and limitations on issuance for A-3 and G-5 visas,” codified as 8 U.S.C. § 1375c (2008). William Wilberforce Trafficking Victims Protection of Reauthorization Act of 2008, Pub. L. No. 110-457, § 203, 122 Stat. 5044, 5057–60 (codified as amended at 8 U.S.C. § 1375c (2012)); U.S. DEP’T. OF STATE, TRAFFICKING PERSONS REPORT 205 (2014).

40. Narayan Lakshman, *Devyani Khobragade Featured in U.S. Human Trafficking Report*, HINDU (June 27, 2015), <http://www.thehindu.com/news/international/world/devyani-khobragade-featured-in-us-human-trafficking-report/article6134380.ece>; U.S. DEP’T. OF STATE, TRAFFICKING IN PERSONS REPORT 205 (2014).

41. Martina E. Vandenberg, *Diplomats Who Commit Domestic Worker Crimes Should Not Get a Free Pass*, WASH. POST (Jan. 1, 2014), https://www.washingtonpost.com/opinions/diplomats-who-commit-domestic-worker-crimes-shouldnt-get-a-free-pass/2014/01/01/61b750b6-719d-11e3-9389-09ef9944065e_story.html. When diplomats do leave their posts, escaping criminal prosecution for human trafficking in the host nation, they should face prosecution in their home country. Congress created extraterritorial jurisdiction for “trafficking in persons offenses committed by persons employed by or accompanying the [f]ederal [g]overnment” in 2005, making prosecutions of U.S. diplomats possible in U.S. courts. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 103, 119 Stat. 3558, 3562 (codified as amended at 18 U.S.C. § 3271 (2012)).

42. See Order, *Bhardwaj v. Dayal*, No. 1:11-cv-04170 (S.D.N.Y. June 20, 2011); *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 598 (S.D.N.Y. 2012).

43. Order, *Bhardwaj v. Dayal*, No. 1:11-cv-04170 (S.D.N.Y. June 20, 2011).

The second, against a lower-ranking consular official, ended in a \$1.4 million default judgment.⁴⁴ Given the serious allegations of abuse made against other officials in the Indian Consulate in New York, the Indian government should have been on notice. Indeed, the U.S. government sent a letter to the Indian government in September 2013, outlining the allegations against Khobragade.⁴⁵ The State Department received no response.

The *Khobragade* case included a veritable smorgasbord of diplomatic law: the arrest of a foreign official with consular immunity under the Vienna Convention on Consular Relations,⁴⁶ followed by a transfer to India's mission to the UN (a post offering full immunity under the 1946 Convention on Privileges and Immunities of the United Nations),⁴⁷ followed by an official request for a waiver of immunity, denial of the waiver, announcement of persona non grata status, a federal indictment, dismissal of the federal indictment, and post-departure re-indictment. But the messy international politics of criminally prosecuting a diplomat undercut much of the power of this indictment. At several points in the process, the Department of State appeared to lose its nerve. The Department of Justice and the U.S. Attorney for the Southern District of New York, responsible for the prosecution itself, never wavered.⁴⁸

A. *U.S. v. Khobragade*: An Anomaly, Not the Rule

India's reaction to the Khobragade arrest and indictment was utterly unprecedented. Analysis of the six criminal indictments brought by federal prosecutors against foreign officials for domestic worker abuse in the United States *before* the *Khobragade* case is instructive. The outcomes in those cases look nothing like the *Khobragade* case: *Khobragade* is a complete anomaly. In none of the prior cases did the officials' sending states ratchet the incident into a diplomatic fracas.⁴⁹ Indeed, in all of the remaining criminal cases, the foreign officials' countries of origin

44. *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 598 (S.D.N.Y. 2012). The judgment remains unpaid.

45. *In Response to a Media Query Relating to Dr. Devyani Khobragade*, EMBASSY OF INDIA (Dec. 18, 2013), https://www.indianembassy.org/press_detail.php?nid=1990.

46. Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 3227, 500 U.N.T.S. 95.

47. Convention on the Privileges of the United Nations, Art. IV, Feb. 13, 1961, 1 U.N.T.S. 15. *See also* Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, U.S.-U.N., Art. V, June 26, 1947, 11 U.N.T.S. 11.

48. Press Release, U.S. Dep't of Justice, Statement of Manhattan U.S. Attorney Preet Bharara on *U.S. v. Devyani Khobragade* (Dec. 18, 2013), <https://www.justice.gov/usao-sdny/pr/statement-manhattan-us-attorney-preet-bharara-us-v-devyani-khobragade>.

49. These cases include *Penzato*, *Soborun*, *Liu*, *Al-Ali*, *Tolan*, and *Bakilana*. *See* Appendix A.

cooperated with federal authorities, or at least allowed the cases to proceed without objection.⁵⁰ In four of the six cases, the criminal matter ended with a plea agreement and substantial restitution for the domestic worker.⁵¹ In one case, the defendants absconded.⁵² And a final case ended in acquittal.⁵³

The *Khobragade* case marked only the second time on record that the State Department had requested a waiver of diplomatic immunity in a domestic worker trafficking case in the United States. The first request, made in 2012 against the Ambassador of Mauritius to the United Nations (and, later, to the United States), was granted.⁵⁴ In November 2012, Mauritius's ambassador to the United States, Somduth Soborun, pled guilty to charges that he had failed to pay his domestic worker minimum wage or overtime while Soborun was serving as his country's permanent representative to the United Nations.⁵⁵ Soborun, who had full diplomatic immunity, pled guilty in a New Jersey federal court after the government of Mauritius waived his immunity.⁵⁶ As part of the plea, he paid a \$5,000 fine as well as \$24,153 in back wages to the domestic worker.⁵⁷

50. *United States v. Penzato*, No. 3:12-cr-00089 (N.D. Cal. Feb. 9, 2012) (allowed the case to proceed without objection); *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012) (sending State waived diplomatic immunity); *United States v. Liu*, No. 4:11-cr-00284 (W.D. Mo. Nov. 18, 2011) (the sending State initially raised the issue of immunity but eventually dropped the argument and allowed the case to proceed); *United States v. Al-Ali*, 1:11-cr-00051 (D.R.I. Mar. 30, 2011) (allowed case to proceed without objection); *United States v. Tolan*, No. 1:11-cr-00536 (E.D. Va. Nov. 23, 2011) (allowed case to proceed without objection); *United States v. Bakilana*, No. 1:10-cr-00093 (E.D. Va. Mar. 29, 2010) (allowed case to proceed without objection).

51. Plea Agreement, *United States v. Penzato*, No. 3:12-cr-00089 (N.D. Cal. Apr. 18, 2013); Plea Agreement, *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012); Plea Agreement, *United States v. Liu*, No. 4:11-cr-00284 (W.D. Mo. Nov. 18, 2011); Plea Agreement, *United States v. Bakilana*, No. 1:10-cr-00093 (E.D. Va. Mar. 29, 2010).

52. The defendants in *United States v. Tolan* fled the country. Memorandum from the U.S. Attorney's Office for the Eastern District of Virginia, Human Trafficking and Related Cases, Alexandria Division 9 (March 24, 2013) (on file with authors). According to PACER, the docket in this case is currently sealed.

53. Judgment of Acquittal, *United States v. Al-Ali*, No. 1:11-cr-00051 (D.R.I. Aug. 8, 2011). The cases in this list are, admittedly, somewhat apples and oranges. Only Soborun enjoyed full immunity. Liu, Bakilana, and Penzato enjoyed only consular immunity (or the equivalent). And, arguably, Al-Ali, Tolan, and Amal possessed no immunity at the time of the indictment. The pattern of indictments brought does indicate that the United States seems to prefer pursuing trafficking cases where full diplomatic immunity is not present.

54. Vandenberg, *supra* note 41.

55. *Diplomat Fined for Failing to Properly Pay Housekeeper*, FBI (Nov. 26, 2012), <https://www.fbi.gov/newark/press-releases/2012/diplomat-fined-for-failing-to-properly-pay-housekeeper>.

56. See Plea Agreement, *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012). The defendant had full diplomatic immunity at the time of the criminal acts under Section 15 of the Agreement Between the United Nations and the United States Regarding the Headquarters of the United Nations, Signed June 26, 1947, and Approved by the General Assembly October 31, 1947. He

The *Soborun* case was resolved quietly and diplomatically, despite being a criminal matter. The case provided a road map that could have been followed in the *Khobragade* case: a quiet waiver, a plea to a lesser charge, payment of back wages through criminal restitution, and no prison time.⁵⁸ Indeed, in the past, almost all cases involving foreign officials with only consular immunity (or lesser status) had ended similarly.⁵⁹ But India, hemmed in by international publicity, national pride, and looming elections, chose a more confrontational route. The Government of India's waiver denial required that Khobragade depart the United States.⁶⁰

B. Post-*Khobragade* Accountability Cold Feet? Implications for Criminal Prosecution of Diplomats and Foreign Officials for Human Trafficking

Diplomatic fall-out from the *Khobragade* case included significant retaliation by the Indian Government. India removed security barriers from the U.S. Embassy, expelled a Diplomatic Security Service agent and his family, and stripped U.S. diplomats and consular officers stationed in India of previously-granted privileges.⁶¹

India's protests may have squeezed concessions from the State Department, but the overreaction failed to derail the criminal case. U.S. Attorney Preet Bharara has made no move toward having the indictment dismissed.⁶² Nevertheless, advocates for domestic workers trafficked by diplomats feared that the *Khobragade* fall-out would lead to cold feet and

later enjoyed immunity under the Vienna Convention on Diplomatic Relations as the Ambassador of Mauritius to the United States.

57. Judgment at 2, *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Nov. 29, 2012); see also Peter J. Sampson, *Mauritius' Diplomat Fined for Underpaying Help in Englewood*, NORTHJERSEY.COM (Nov. 26, 2012), <http://www.northjersey.com/news/mauritius-diplomat-fined-for-underpaying-help-in-englewood-1.518557>.

58. See Plea Agreement, *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012).

59. Vandenberg, *supra* note 41.

60. "[I]n those instances in which a person with immunity is believed to have committed a serious offense (any felony or crime of violence) and the sending country has not acceded to the U.S. Department of State's request for a waiver of immunity, it is the Department's policy to require the departure of that individual from the United States." U.S. DEP'T OF STATE OFFICE OF FOREIGN MISSIONS, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES 22 (2015), <http://www.state.gov/documents/organization/150546.pdf>.

61. Rama Lakshmi & Karen DeYoung, *India Expels U.S. Diplomat Who Allegedly Helped Evacuate Nanny's Family*, WASH. POST (Jan. 11, 2014), https://www.washingtonpost.com/world/india-demands-ouster-of-us-diplomat-allegedly-involved-in-nanny-pay-dispute/2014/01/10/2652c510-79fd-11e3-a647-a19deaf575b3_story.html.

62. AFL-CIO President Richard Trumka applauded U.S. Attorney Bharara and the Department of Justice's efforts to pursue the case. Press Release, AFL-CIO, Statement by AFL-CIO President Richard Trumka on Indictment of Indian Consular Officer Devyani Khobragade (Jan. 10, 2014), <http://www.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-Richard-Trumka-on-Indictment-of-Indian-Consular-Officer-Devyani-Khobragade>.

an end to prosecutions. Advocates also feared that defendants with mere consular immunity might take a page from the *Khobragade* playbook, launching campaigns to join their country's mission to the UN to gain full diplomatic immunity.

Two developments partially allayed these fears: the closing of the “*Khobragade* Loophole” and the return to pre-*Khobragade* patterns. First, the *Khobragade* case exposed a huge lacuna in U.S. policy on diplomatic immunity. *Khobragade* created a veritable playbook for transforming a non-immune, non-diplomat into a fully-immune diplomat with the stroke of pen on a transfer order. In response to the “*Khobragade* Loophole,” the U.S. Mission to the United Nations issued a diplomatic memorandum on January 13, 2016.⁶³ The communication altered the criteria required for accreditation by the United States Government. Now, to qualify for diplomatic privileges and immunities, the U.S. Mission to the United Nations stated, a person must:

(8) not be subject, at the time accreditation is sought, to any pending criminal charges in the United States punishable by incarceration for more than one year nor have a family member forming part of the diplomatic envoy's household who is subject to any such charges and is present in the United States at the time such accreditation is sought.⁶⁴

Paragraph 8 effectively ended the “*Khobragade* Loophole.”⁶⁵

Two criminal indictments that followed the *Khobragade* incident evidenced a return to the normal patterns of criminal prosecution. Those two cases, described below, are the sum total of federal criminal cases alleging A-3/G-5 abuse filed post-*Khobragade*. What cannot be known is

63. Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Missions to the United Nations (Jan. 13, 2016), http://usun.state.gov/sites/default/files/organization_pdf/hc-01-16.pdf. The memorandum summarizes the criteria that apply to “the registration and inclusion of an individual in the list of Members of the Permanent Missions Entitled to Diplomatic Privileges and Immunities in the United States under the provisions of Article V, Section 15 of the Headquarters Agreement between the United States and the United Nations.” *Id.* at 1. Had Paragraph 8 existed at the time of the *Khobragade* case, it would not have been possible for the Government of India to transfer *Khobragade* to a position at the Permanent Mission of India to the United Nations. As a consular official, protected only by the Vienna Convention on Consular Relations, *Khobragade* would have been forced to face the criminal charges against her without recourse to a defense of diplomatic immunity.

64. *Id.* at 3.

65. At the time the State Department approved *Khobragade*'s transfer to the Indian Mission to the United Nations, two unnamed State Department officials told CNN that the State Department had no alternative but to approve the transfer, as *Khobragade* did not pose a national security threat. Jethro Mullen & Harmeet Shah Singh, *India Asks U.S. to Withdraw Official From its Embassy in New Delhi*, *Source Says*, CNN (Jan. 10, 2014 12:01 PM), http://www.cnn.com/2014/01/10/politics/us-india-diplomacy/index.html?hpt=hp_t2.

how many more cases were not indicted due to the chilling effect of the *Khobragade* incident.⁶⁶ At the time of publication, the authors are aware of at least five cases that the United States has failed to indict.

The two post-*Khobragade* cases indicted were *U.S. v. Amal* and *U.S. v. Al Homoud*.

1. *U.S. v. Amal*⁶⁷

This case against a former foreign official proceeded without diplomatic immunity claims. Federal prosecutors indicted Abdelkader Amal, a former defense attaché at the Moroccan Embassy to the United States, and his wife, Hnia Amal, for alien harboring in the U.S. District Court for the Eastern District of Virginia on March 4, 2014.⁶⁸ Abdelkader Amal had previously held an A-1 diplomatic visa as a military official in the Moroccan Embassy in Washington, D.C.⁶⁹ The charges stemmed from allegations of trafficking of a domestic worker from Morocco to the United States for forced labor.⁷⁰ The defendants pled guilty to alien harboring on May 6, 2014, and agreed to pay at least \$52,700 in restitution to the victim, F.H.⁷¹ The defendants admitted that they had fraudulently obtained an A-3 visa.⁷² Mrs. Amal received a sentence of three months home confinement and two years probation.⁷³ Mr. Amal, who pled guilty in a separate case,

66. In the period since the *Khobragade* case, domestic worker plaintiffs have filed five new civil cases. In theory, any one of these cases could have been brought as a federal criminal case. *See Hussain v. Shaukat*, No. 1:16-cv-00322 (E.D. Va. Mar. 22, 2016); *Ouedraogo v. Bonkoungou*, No. 1:15-cv-01345 (S.D.N.Y. Feb. 24, 2015); *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Mar. 21, 2014); *Arma v. Prakoso*, No. 8:14-cv-03113 (D. Md. Oct. 2, 2014); *Lipenga v. Kambalame*, No. 8:14-cv-03980 (D. Md. Dec. 19, 2014).

67. The government brought separate criminal cases against the husband and wife. *See* Criminal Complaint, *United States v. Hnia Amal*, No. 1:14-cr-00152 (E.D. Va. Mar. 4, 2014); Criminal Complaint, *United States v. Abdelkader Amal*, No. 1:14-cr-00151 (E.D. Va. Mar. 4, 2014).

68. *See* Criminal Complaint, *United States v. Hnia Amal*, No. 1:14-cr-00152 (E.D. Va. Mar. 4, 2014); Criminal Complaint, *United States v. Abdelkader Amal*, No. 1:14-cr-00151 (E.D. Va. Mar. 4, 2014).

69. Press Release, U.S. Dep't of Justice, Virginia Couple Pleads Guilty to Immigration Charges for Harboring Domestic Servant in Their Home (May 6, 2014), <http://www.justice.gov/usao-edva/pr/virginia-couple-pleads-guilty-immigration-charges-harboring-domestic-servant-their-home> [hereinafter May 2014 DOJ Press Release].

70. Complaint at 1, *Doe v. Amal*, No. 1:12-cv-01359 (E.D. Va. Nov. 27, 2012). The civil case was filed prior to the criminal case.

71. Plea Agreement at 5, *United States v. Hnia Amal*, No. 1:14-cr-00152 (E.D. Va. May 6, 2014); Plea Agreement at 5, *United States v. Abdelkader Amal*, No. 1:14-cr-00151 (E.D. Va. May 6, 2014). *See also* May 2014 DOJ Press Release, *supra* note 69.

72. *See* May 2014 DOJ Press Release, *supra* note 69.

73. Judgment at 2–3, *United States v. Hnia Amal*, No. 1:14-cr-00152 (E.D. Va. Sept. 25, 2014).

was sentenced to three years of probation and payment of restitution.⁷⁴ The victim also filed a federal civil trafficking case, alleging that Mr. Amal had both trafficked her into forced labor⁷⁵ and repeatedly raped her.⁷⁶ The civil case, which preceded the criminal indictment, ended in an undisclosed settlement.⁷⁷

2. *U.S. v. Al Homoud*⁷⁸

On June 3, 2015 a federal grand jury in the U.S. District Court of the Western District of Texas charged Hassan Salem Al-Homoud and his wife, Zainab Mohamed Hasan Hatim Al-Hosani, with two counts of forced labor.⁷⁹ The indictment alleged that the defendants trafficked two women, R.R. and R.O., to the United States for forced labor.⁸⁰ The women had A-3 visas.⁸¹ Mr. Al-Homoud, a colonel in the Qatari military, was reportedly present in the United States to attend military training at Camp Bullis.⁸² The domestic workers, one from Indonesia and one from Bangladesh, alleged that the defendants forced them to work long hours each day for approximately eight months.⁸³ The women received no compensation for their work.⁸⁴ They were not allowed breaks or use of the restroom, and were only fed small amounts of leftovers at the end of the day.⁸⁵ The defendants kept R.R. and R.O. in a separate, unfurnished apartment where they were forced to sleep on the floor.⁸⁶ The domestic workers alleged that the defendants locked them inside at night.⁸⁷ The defendants confiscated their passports and cut off all communication with the outside world.⁸⁸

74. Judgment at 2, 4, *United States v. Abdelkader Amal*, No. 1:14-cr-00151 (E.D. Va. Sept. 29, 2014).

75. Complaint at 12–15, *Doe v. Amal*, No. 1:12-cv-01359 (E.D. Va. Nov. 27, 2012).

76. *Id.* at 10–11.

77. Civil Docket at 5, *Doe v. Amal*, No. 1:12-cv-01359 (E.D. Va. Nov. 27, 2012).

78. See Indictment, *United States v. Al-Homoud*, No. 5:15-cr-00391 (W.D. Tex. June 3, 2015).

79. *Id.* at 2–3.

80. *Id.*

81. Transcript of Status Conference at 25–26, *United States v. Al-Homoud*, No. 5:15-cr-00391 (W.D. Tex. Oct. 14, 2015).

82. Press Release, Dep't of Justice, Qatar Military Official and Wife Indicted by Federal Grand Jury for Allegedly Engaging in Forced Labor (June 3, 2015), <http://www.justice.gov/usao-wdtx/pr/qatar-military-official-and-wife-indicted-federal-grand-jury-allegedly-engaging-forced>.

83. Transcript of Sentencing Hearing at 24, *United States v. Al-Homoud*, No. 5:15-cr-00391 (W.D. Tex. Feb. 9, 2016).

84. *Id.* at 21, 23.

85. *Id.* at 18–19, 21.

86. *Id.* at 21.

87. *Id.* at 18.

88. *Id.* at 16–17.

Both R.R. and R.O. suffered extensive emotional abuse.⁸⁹ On one occasion, R.O. alleged that Ms. Al-Hosani beat her with a stick after she ate food out the trash.⁹⁰ Defendants also denied R.O. medical treatment.⁹¹

Unlike Khobragade, whose government fought the indictment and improperly claimed immunity, Mr. Al-Homoud pled guilty to visa fraud.⁹² His wife, Ms. Al-Hosani, pled guilty to failing to report knowledge of a felony.⁹³ Mr. Al-Homoud was sentenced to five years supervised released probation and immediate removal from the United States.⁹⁴ Ms. Al-Hosani was sentenced to three years' probation and immediate removal from the United States.⁹⁵ The court also ordered restitution in the amount of \$120,000.⁹⁶ At sentencing, Mr. Al-Homoud stated that he took full responsibility for his actions. He told the federal judge presiding over the case, "My conduct has brought shame upon myself, my lovely wife, upon my family and upon my country."⁹⁷

The defendants departed the United States on February 10, 2016.⁹⁸ Diplomatic immunity was never raised as a defense.⁹⁹ Instead, it was announced that military officers from Qatar would no longer be permitted to bring domestic workers to the United States.¹⁰⁰

Amal and *Al Homoud* ended just as other *pre-Khobragade* cases had ended: a plea to a lesser crime, criminal restitution for the victim(s), and

89. *Id.* at 18–19, 22–23.

90. *Id.* at 19–20.

91. *Id.* at 19–20, 22–23. R.O. suffered from undiagnosed cancer while held in the Al Homoud residence. *Id.* at 22.

92. Press Release, Dep't of Justice, Qatar Military Official and Wife Plead Guilty to Federal Charges (Dec. 11, 2015), <https://www.justice.gov/usao-wdtx/pr/qatar-military-official-and-wife-plead-guilty-federal-charges>.

93. *Id.*

94. Transcript of Sentencing Hearing at 41, *United States v. Al-Homoud*, No. 5:15-cr-00391 (W.D. Tex. Feb. 9, 2016).

95. *Id.* at 41, 43.

96. This amount represented \$60,000 to each of the two victims. In addition to this amount, the prosecutor disclosed in the sentencing hearing that each of the victims had reached a confidential civil settlement with the defendants. *Id.* at 6.

97. *Id.* at 37.

98. *Id.* at 8.

99. Al Homoud's diplomatic status was somewhat murky. According to court documents, he possessed an A-2 visa, which gave him the privilege of bringing A-3 domestic workers to the United States. Transcript of Status Conference at 25, *United States v. Al-Homoud*, No. 5:15-cr-00391 (W.D. Tex. Oct. 14, 2015).

100. *Id.* at 26.

little or no prison time.¹⁰¹ Six of nine criminal cases prosecuted against foreign officials by federal authorities have ended with a plea agreement and restitution.¹⁰² Two indictments remain outstanding.¹⁰³ Given the alternative—impunity—these results are acceptable.

But to gain a full understanding of trafficking of domestic workers by diplomats, one must also examine the federal civil dockets. Those dockets reveal serious crimes, the vast majority never indicted.

II. THE RISE OF CIVIL LITIGATION FOR DOMESTIC WORKERS ABUSED BY DIPLOMATS

Domestic workers trafficked by foreign officials have filed more than two dozen federal civil trafficking cases since 2003.¹⁰⁴ These include cases against sitting diplomats, World Bank employees, and consular officials.¹⁰⁵ Traditionally, civil suits against diplomats presented a somewhat hopeless prospect. Because full diplomats could easily have cases dismissed on grounds of immunity, some advocates questioned whether the suits were worthwhile.¹⁰⁶ But two developments since 2008 changed the attitude

101. See *supra* notes 71–74, 92–96 and accompanying text. Hsien Hsien Liu spent some time in prison and was ordered to reimburse the government for the costs of her time served. Judgment at 3, U.S. v. Liu, No. 11-00284 (W.D. Mo. Jan. 27, 2012).

102. These cases are *Penzato*, *Soborun*, *Amal*, *Al Homoud*, *Liu*, and *Bakilana*. See Appendix A.

103. These cases are *Khobragade* and *Tolan*. *Id.*

104. The Trafficking Victims Protection Reauthorization Act of 2003 created a civil cause of action. Pub. L. 108-193, 117 Stat. 2875 (codified as amended at 18 U.S.C. § 1595 (2012)). As of May 2016, civil trafficking cases had been brought against diplomats and other foreign officials from Bangladesh (1); Bolivia/Germany (dual citizen) (1); Burkina Faso (1); Cameroon (1); Ethiopia (1); India (2); Indonesia (1); Italy (1); Kenya (1); Kuwait (3); Malawi (1); Morocco (2); Pakistan (1); Peru (2); the Philippines (2); Qatar (2); Sudan (1); Tanzania (2); Uganda (1); and the United Arab Emirates (1). See Appendix B for case list.

105. See *id.* A civil case that predated the TVPRA, *Park v. Shin*, settled the question of whether consular immunity precluded a civil suit against a consular official for abuse of a domestic worker. The Ninth Circuit Court of Appeals held that the defendants, deputy consul of Korea and his wife, were not entitled to consular immunity. “Defendants’ hiring and supervision of Plaintiff was not a consular function because Plaintiff was employed primarily as a personal domestic servant of the Shin family. Further, the employment-related acts allegedly committed by Defendants were not performed in the exercise of a consular function. Accordingly, the Vienna Convention does not provide them with immunity.” *Park v. Shin*, 313 F.3d 1138, 1145–46 (9th Cir. 2002).

106. This was particularly true after the loss on the question of the “commercial activity exception” to the Vienna Convention on Diplomatic Relations in the *Tabion* case. That case held that “[d]ay-to-day living services such as domestic help were not meant to be treated as outside a diplomat’s official functions.” *Tabion v. Mufti*, 73 F.3d 535, 538–39 (4th Cir. 1996). Subsequent cases also foreclosed reliance on the commercial activity exception of the VCDR as a vehicle to pierce diplomatic immunity. In the words of the U.S. Government’s Statement of Interest filed in the *Paredes v. Vila* case, “[w]hen diplomats enter into contractual relationships for personal goods or services incidental to residing in the host country, including the employment of domestic workers, they are not engaging in ‘commercial activity’ as that term is used in the Diplomatic Relations Convention.” Opinion at 9,

toward these suits entirely: (1) Congress extension of immigration relief to A-3/G-5 visa holders suing their employers; and (2) the State Department's intervention in the *Swarna* and *Baoanan* cases.

A. Immigration Relief and Civil Litigation

In 2008, Congress legislated incentives for domestic workers abused by diplomats to seek a remedy in federal court. In an effort to encourage lawsuits by A-3 and G-5 visa-holding domestic workers, Congress created a new immigration remedy for A-3/G-5 visa holders filing lawsuits against their traffickers. Under Section 203(c)(1)(A) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, domestic workers with special visas may remain in the United States to pursue their case against the defendants.¹⁰⁷ Domestic workers need only file a copy of their civil complaint with U.S. Citizenship and Immigration Services (USCIS) to receive immediate deferred action and work authorization.¹⁰⁸ While the new immigration regime has not resulted in a surge in lawsuits, the deferred action option does provide victims some relief, particularly in cases where the U.S. government declines prosecution.¹⁰⁹

B. Post-*Swarna*: Residual Immunity and the End of Futility

Civil litigation also became a more promising proposition after the State Department intervened in two cases, *Swarna* and *Baoanan*.¹¹⁰ The State Department's interventions in these cases educated courts—and litigators—about diplomats' amenability to suit following their departure from their post.¹¹¹ For litigators who had spent years unsuccessfully

Paredes v. Vila, No. 1:06-cv-00089 (D.D.C. Mar. 29, 2007) (quoting Statement of Interest of the United States at 14, Paredes v. Vila, No. 1:06-cv-00089 (D.D.C. Jan. 18, 2006)).

107. Pub. L. No. 110-457, § 203(c)(1)(A), 122 Stat. 5044, 5058 (codified as amended at 8 U.S.C. § 1375c(e)).

108. Press Release, U.S. Citizenship & Immigration Servs., USCIS Will Offer Protection for Victims of Human Trafficking and Other Violations (Mar. 11, 2011), <https://www.uscis.gov/news/uscis-will-offer-protection-victims-human-trafficking-and-other-violations>.

109. In cases where a federal investigation is underway, law enforcement officials have the authority to request Continued Presence (CP) for victims. Unfortunately, very few victims receive this form of relief. In FY 2015, only 173 victims in the United States received Continued Presence. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 391 (2016) [hereinafter TRAFFICKING IN PERSONS REPORT].

110. *Baoanan v. Baja*, 627 F. Supp. 2d 155 (S.D.N.Y. 2009); *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010).

111. *Baoanan*, 627 F. Supp. 2d at 162 (“Also instructive on this point is the Statement of Interest filed by the Government.”); *Swarna*, 622 F.3d at 136 (“[I]t seems to us appropriate to apply the Legal Adviser’s declaration regarding criminal acts to civil acts as well, in accordance with the advice of the United States in its *amicus* brief.”).

fighting to trump immunity through the “commercial activity exception” to the Vienna Convention on Diplomatic Relations, the State Department’s legal arguments were a revelation.

Vishranthamma Swarna, a citizen of India, brought Alien Tort Statute claims against Mr. Badar Al-Awadi, his wife, and the State of Kuwait.¹¹² She alleged that the defendants trafficked her from Kuwait to the United States for forced labor.¹¹³ At the time of the alleged abuse, Al-Awadi was a diplomat stationed at the Kuwaiti Mission to the United Nations.¹¹⁴ Ms. Swarna, who entered the United States on a G-5 visa in September 1996, alleged that the defendants forced her to work sixteen to seventeen hours each day for approximately four years.¹¹⁵ Ms. Swarna alleged that she received only \$200 per month for the first year.¹¹⁶ Her complaint alleged that Ms. Swarna had suffered extreme physical, verbal, and psychological abuse.¹¹⁷ Mr. Al-Awadi allegedly raped Ms. Swarna on many occasions, threatening to kill her if she told anyone about the abuse.¹¹⁸

The complaint also alleged that the defendants confiscated her passport and isolated Ms. Swarna from her family and the outside world.¹¹⁹ The defendants did not allow Ms. Swarna to leave the apartment alone, telling her that the police would arrest her if she left.¹²⁰ Ms. Swarna was not allowed to attend church, speak with non-family members, or learn English.¹²¹ The defendants also restricted her phone calls and read the letters she received and sent.¹²² On one occasion when both defendants were out of the apartment, Ms. Swarna fled.¹²³

The case might have proceeded to a full dismissal on grounds of diplomatic immunity, as had so many cases in the past. But on this occasion, as in the *Baoanan* case, the United States Department of State intervened with a brief clarifying the law on residual immunity under Article 39(2) of the Vienna Convention on Diplomatic Relations.¹²⁴ The

112. Complaint at 19–21, *Swarna v. Al-Awadi*, No. 1:06-cv-04880 (S.D.N.Y. June 23, 2006).

113. *Id.* at 1.

114. *Swarna*, 622 F.3d at 128.

115. *Id.* at 129.

116. *Id.* at 128.

117. *Id.* at 129–30.

118. *Id.* at 130.

119. *Id.* at 128.

120. Complaint at 9, *Swarna v. Al-Awadi*, No. 1:06-cv-04880 (S.D.N.Y. June 23, 2006).

121. *Swarna*, 622 F.3d at 129.

122. *Id.*

123. Complaint at 14–15, *Swarna v. Al-Awadi*, No. 1:06-cv-04880 (S.D.N.Y. June 23, 2006).

124. Brief for the United States of America as Amicus Curiae, *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010).

U.S. government argued—and the Second Circuit Court of Appeals agreed—that full diplomatic immunity ceases to protect diplomats once they have left their post.¹²⁵ Departed diplomats enjoy a residual diplomatic immunity that covers only their official acts.¹²⁶ Unofficial acts, such as trafficking and raping a domestic worker, do not fall under the immunity provided to diplomats who have left their posts.¹²⁷

The *Swarna* decision sent a shockwave through the community of attorneys representing abused domestic workers. No longer were civil suits against diplomats an exercise in futility. Rather, civil suits, even against sitting diplomats, became an exercise in strategic negotiation and timing. At some stage, the diplomat would leave the United States. And at that moment, like Khobragade, that diplomat would become amenable to suit and indictment.

Eighteen federal civil cases have been filed against officials who held full diplomatic accreditation at the time of the alleged trafficking.¹²⁸ Yet only *two* (2) cases resulted in an involuntary dismissal.¹²⁹ The knowledge that a defendant would eventually become amenable to suit changed the conversation entirely. Defense attorneys began to advise their diplomat clients to resolve the cases prior to departure from the United States.¹³⁰ And pro bono attorneys for trafficking victims began to focus more intensely on civil, as well as criminal, remedies.

125. See *Swarna*, 622 F.3d at 134–40.

126. *Id.* at 137.

127. *Id.* at 145–46.

128. See Appendix B.

129. Order Granting Motion to Dismiss, *Villarreal v. Tenorio*, No. 8:11-cv-02147 (D. Md. Aug. 2, 2011) (dismissing case involuntarily without prejudice); Order Granting Motion to Dismiss, *Rios Fun v. Pulgar*, No. 2:13-cv-03679 (D.N.J. Jan. 14, 2014) (dismissing case involuntarily without prejudice). Courts also dismissed two additional Fair Labor Standards Act cases without 18 U.S.C. § 1595 counts on grounds of diplomatic immunity. These two cases are not included in the total data set of twenty-eight cases analyzed for this article. But the reasoning in these cases on the immunity question is identical to that used in trafficking cases. See Opinion Granting Defendants' Motion to Dismiss, *Paredes v. Vila*, No. 1:06-cv-00089 (D.D.C. Mar. 29, 2007); Memorandum and Opinion Granting Defendants' Motion to Dismiss and Defendants' Motion to Quash Service of Process, *Montuya v. Chedid*, No. 1:10-cv-00695 (D.D.C. Apr. 26, 2011). Judge Paul Friedman included helpful dicta in the *Paredes* case. In footnote 2, he recommended that the statute of limitations be tolled until the defendants no longer enjoyed full diplomatic immunity, citing to *Knab v. Republic of Georgia*, No. 97CV3118, 1998 WL 34067108, at *4 (D.D.C. May 29, 1998). Opinion Granting Defendants' Motion to Dismiss at 2 n.2, *Paredes v. Vila*, No. 1:06-cv-00089 (D.D.C. Mar. 29, 2007).

130. Stipulation of Dismissal by Plaintiffs, *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. Feb 2, 2012); Order Approving Joint Stipulation of Dismissal, *Elat v. Ngoubene*, No. 8:11-cv-02931 (D. Md. July 9, 2014). Additional cases settled on demand letters alone, even before victims filed civil suits.

C. The Road Not Taken: Civil Cases Without Indictments

It is fair to assume that the trafficking victims who filed federal civil cases also reported the crimes to federal law enforcement officials. These victims have little choice. With few exceptions, all trafficking victims must report to law enforcement if they wish to obtain a T-visa to remain in the United States.¹³¹ Because these victims must attest that they “have complied with requests from Federal, State, or local law enforcement to assist in the investigation or prosecution of acts of trafficking,”¹³² diplomatic trafficking cases are routinely reported to law enforcement. Since 2003, twenty eight domestic worker cases have proceeded as federal civil trafficking cases,¹³³ twenty-seven under 18 USC §1595 and one under the Alien Tort Statute.¹³⁴ In four cases, the civil case proceeded alongside a federal criminal indictment.¹³⁵ But twenty-four civil cases represent allegations of trafficking reported to federal authorities—and filed as civil cases—that did not result in federal criminal charges.¹³⁶

Examples of several cases with serious allegations that did not end in criminal indictments demonstrate this trend:

1. *Waru v. Madhvani*¹³⁷

Nimisha Madhvani was the First Secretary at the Embassy of Uganda.¹³⁸ Susan Waru, a domestic worker, brought suit against Ms. Madhvani, her brother Amit Madhvani, and her sister-in-law Neeta Madhvani.¹³⁹ The complaint alleged that the defendants trafficked Ms. Waru from Uganda to the United States for forced labor.¹⁴⁰ The defendants

131. U.S. Dep’t of Homeland Sec., U.S. Citizenship & Immigration Servs., I-914 Application for T Nonimmigrant Status, at Part C(7) (July 29, 2014), <https://www.uscis.gov/sites/default/files/files/form/i-914.pdf>. Victims need not cooperate if they are minors or can show that they are too traumatized to respond to law enforcement requests.

132. *Id.*

133. See Appendix B. The number of federal civil suits is only part of the picture. Current numbers do not provide the full scope of trafficking of domestic workers by diplomats. Current numbers of diplomatic human trafficking cases in the United States are misleading. This is because many cases settle before the complaints are even filed. Many cases against diplomats and international organization officials have settled on the basis of demand letters alone.

134. *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010). *Swarna* predated passage of 18 U.S.C. § 1595 and was filed under the Alien Tort Statute.

135. See *supra* note 6.

136. A PACER search revealed no corresponding criminal dockets for these twenty-four civil cases.

137. *Waru v. Madhvani*, No. 1:05-cv-00662 (D.D.C. Apr. 1, 2005).

138. U.S. Statement of Interest at 1, *Waru v. Madhvani*, No. 1:05-cv-00662 (D.D.C. May 13, 2005).

139. Complaint, *Waru v. Madhvani*, No. 1:05-cv-00662 (D.D.C. Apr. 1, 2005).

140. *Id.* at 1.

offered Ms. Waru employment in the United States, promising a fair salary, schooling, and room and board.¹⁴¹ Ms. Waru entered the United States on an A-3 visa in April 1999.¹⁴² For four and a half years, Ms. Waru worked in both Nishima Madhvani's residence and in Amit and Neeta Madhvani's residence.¹⁴³ She worked seven days a week and did not receive any wages.¹⁴⁴ The defendants also allegedly forced her to clean their friends' homes without proper compensation.¹⁴⁵ Ms. Waru's complaint alleged that the defendants confiscated her passport and that she feared arrest and deportation if she left.¹⁴⁶ Ms. Waru was not permitted to communicate with outsiders, answer the door, or answer the telephone.¹⁴⁷ Nishima Madhvani claimed diplomatic immunity,¹⁴⁸ but the fact that the two family members also named as defendants did not have immunity complicated the case for the defense.¹⁴⁹ The case ultimately settled.¹⁵⁰ No criminal charges were filed.¹⁵¹

2. *Sabbithi v. Al Saleh*¹⁵²

Major Waleed KH N.S. Al Saleh was Attaché to the Embassy of Kuwait in Washington, D.C.¹⁵³ Three Indian domestic workers filed a federal civil suit alleging that Major Al Saleh and his wife, Ms. Al Amor, trafficked them from Kuwait to the United States for forced labor.¹⁵⁴ The complaint also listed the State of Kuwait as a defendant.¹⁵⁵ All three plaintiffs worked for the defendants in Kuwait prior to their arrival in the

141. *Id.* at 3.

142. *Id.*

143. *Id.* at 4.

144. *Id.*

145. *Id.*

146. *Id.* at 1, 4.

147. *Id.* at 4.

148. Motion to Dismiss the Complaint and to Quash Service on Grounds of Diplomatic Immunity by Nimisha Madhvani, Waru v. Madhvani, No. 1:05-cv-00662 (D.D.C. May 13, 2005).

149. The U.S. filed a statement of interest confirming that Ms. Madhvani had diplomatic immunity, but made no such intervention on behalf of the additional two defendants. U.S. Statement of Interest at 1, Waru v. Madhvani, No. 1:05-cv-00662 (D.D.C. May 13, 2005). The mix of immune and non-immune defendants often leads defendants to settle. See Martina E. Vandenberg & Alexandra Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More?*, 7 INTERCULTURAL HUM. RTS. L. REV. 77, 97–98 (2012).

150. Civil Docket, Waru v. Madhvani, No. 1:05-cv-00662 (D.D.C. Apr. 1, 2005).

151. A PACER search revealed no corresponding criminal docket for this case.

152. *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. Jan. 18, 2007).

153. Amended Complaint, *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. May 26, 2010).

154. *Id.* at 32–34.

155. *Id.* at 5.

United States.¹⁵⁶ The domestic workers each entered the United States on an A-3 visa.¹⁵⁷ The complaint alleged that the plaintiffs worked sixteen to nineteen hours each day.¹⁵⁸ They did not receive any direct wages. Small amounts were transferred to their families each month.¹⁵⁹ The plaintiffs allegedly suffered verbal and psychological abuse, as well as threats of serious physical harm.¹⁶⁰ The defendants confiscated the plaintiffs' passports and created a climate of fear and isolation.¹⁶¹ The plaintiffs were prohibited from leaving the house alone, approaching the windows, looking outside, or opening the door.¹⁶² The defendants told them that they would be arrested or kidnapped if anyone saw them.¹⁶³ The plaintiffs were only allowed one telephone call per month to their families.¹⁶⁴ After three months of alleged forced labor, Ms. Sabbithi—one of the domestic workers—escaped and sought refuge with the defendants' neighbor.¹⁶⁵ He took her in and called the police. After her escape, Mr. Al Omar allegedly threatened the other two plaintiffs, Ms. Quadros and Ms. Fernandes, with harm if they attempted to escape.¹⁶⁶ More than two months later, the two escaped and found refuge with the neighbor who had helped Ms. Sabbithi.¹⁶⁷ The defendants' motion to dismiss based on diplomatic immunity was first granted and then vacated.¹⁶⁸ The case ultimately settled.¹⁶⁹ Although the case was reported to federal authorities, no criminal indictment was brought.¹⁷⁰

3. *Leo v. Al Naser*¹⁷¹

Ahmed S.J. Al Naser was an Attaché to the Embassy of the State of Kuwait in Washington, D.C.¹⁷² Ms. Regina Leo, a citizen of India, filed a

156. *Id.* at 12, 14, 16.

157. *Id.* at 4.

158. *Id.* at 1.

159. *Id.* at 2.

160. *Id.* at 18–19.

161. *Id.* at 3, 21–28.

162. *Id.* at 2.

163. *Id.*

164. *Id.* at 25.

165. *Id.* at 28–29.

166. *Id.* at 29.

167. *Id.* at 30.

168. Civil Docket at 18, *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. Jan. 18, 2007).

169. Joint Status Report, Civil Docket at 174, *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. Dec. 22, 2011).

170. Amended Complaint at 2, 49, *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. May 26, 2010).

171. *Leo v. Al Naser*, No. 1:08-cv-01263 (D.D.C. July 22, 2008).

federal civil suit in the District Court of the District of Columbia, alleging that Mr. Al Naser and his wife, Ms. Al Najadi, trafficked her from Kuwait to the United States for forced labor.¹⁷³ Ms. Leo had previously worked as housekeeper in Kuwait for Ms. Al Najadi's sister.¹⁷⁴ The defendants offered Ms. Leo a position as their housekeeper in the United States and allegedly threatened to send Ms. Leo back to India if she did not accept.¹⁷⁵ According to the complaint, Ms. Leo worked for 16 to 18 hours each day for approximately seven months.¹⁷⁶ In return, she received virtually no compensation.¹⁷⁷ Eventually, the defendants instructed Ms. Leo to give them what little money she possessed for "safekeeping."¹⁷⁸ Ms. Leo alleged that she experienced extreme physical, verbal, and psychological abuse.¹⁷⁹ According to the complaint, defendants forced Ms. Leo to eat her meals on the kitchen floor.¹⁸⁰ They also allegedly pushed, dragged, scratched, and kicked her.¹⁸¹ The complaint alleged that the defendants confiscated Ms. Leo's passport and visa and isolated her.¹⁸² Ms. Leo was not allowed to leave the house alone and prohibited from looking out the window.¹⁸³ Defendants told her that there were video cameras in the house and threatened her with deportation.¹⁸⁴ Ms. Leo also alleged that Mr. Al Naser repeatedly raped her, threatening to deport her to India if she refused his advances.¹⁸⁵ Ms. Leo eventually met another neighborhood housekeeper who agreed to help her.¹⁸⁶ With the help of a non-governmental organization, she was able to flee.¹⁸⁷ The case eventually settled.¹⁸⁸ Although the case was reported to federal authorities, no criminal indictment was brought.¹⁸⁹

172. Complaint at 3, *Leo v. Al Naser*, No. 1:08-cv-01263 (D.D.C. July 22, 2008).

173. *Id.* at 14–17.

174. *Id.* at 4.

175. *Id.*

176. *Id.* at 6.

177. *Id.* at 9.

178. *Id.* at 10.

179. *Id.* at 6–9.

180. *Id.* at 7.

181. *Id.*

182. *Id.* at 6–8.

183. *Id.* at 8.

184. *Id.* at 7–8.

185. *Id.* at 8–9.

186. *Id.* at 10.

187. *Id.*

188. Motion for Voluntary Dismissal with Prejudice at 1, *Leo v. Al Naser*, No. 1:08-cv-01263 (D.D.C. June 1, 2011).

189. A PACER search revealed no corresponding criminal docket for this case.

4. *Lipenga v. Kambalame*¹⁹⁰

Jane Ngineriwa Kambalame was a diplomat at the Embassy of the Republic of Malawi.¹⁹¹ Fainess Lipenga filed a federal civil suit in the District of Maryland, alleging that Ms. Kambalame trafficked her from Malawi to the United States for forced labor.¹⁹² The complaint alleged that Ms. Lipenga worked 16 hours each day for approximately two years and eight months.¹⁹³ She received no wages for the first few months and later received between \$100 and \$180 per month.¹⁹⁴ Ms. Kambalame allegedly threatened Ms. Lipenga with arrest and deportation if she left or ran away. The Malaysian diplomat repeatedly told the victim that she would “never get into trouble” because of her diplomatic status.¹⁹⁵ The defendant also subjected Ms. Lipenga to severe emotional distress.¹⁹⁶ Ms. Kambalame allegedly refused to provide the victim with adequate medical care in the face of obviously declining health.¹⁹⁷ Following her escape, Ms. Lipenga was diagnosed with tuberculosis, HIV, and depression.¹⁹⁸ This civil case is ongoing.¹⁹⁹ There is no federal criminal indictment.²⁰⁰

5. *Rana v. Islam*²⁰¹

Monirul Islam was the Consul General of Bangladesh at the Consulate General of Bangladesh in New York City.²⁰² Mashud Parves Rana, a domestic worker, brought suit against Mr. Islam and his wife alleging that the couple trafficked him from Bangladesh to the United States for forced labor.²⁰³ Mr. Rana alleged that the defendants forced him into domestic servitude for almost 19 months.²⁰⁴ The victim worked 17 hours each day as a domestic worker and also as a cook, busboy, and server for events at the

190. *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Dec. 29, 2014).

191. Complaint at 1, *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Dec. 29, 2014).

192. *Id.* at 12.

193. *Id.* at 1.

194. *Id.*

195. *Id.* at 6.

196. *Id.* at 13.

197. *Id.* at 9–11.

198. *Id.* at 10.

199. Civil Docket, *Lipenga v. Kambalame*, No. 8:14-cv-03980 (D. Md. Dec. 19, 2014).

200. This case was reported to federal law enforcement authorities, as the victim received a T-Visa. Complaint at 2, *Lipenga v. Kambalame*, No. 8:14-cv-03980 (D. Md. Dec. 29, 2014). There is no corresponding criminal case on PACER.

201. *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Mar. 21, 2014).

202. Order Denying Motion to Dismiss at 2, *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Jan. 6, 2015).

203. *Id.* at 2–3.

204. *Id.* at 2.

Bangladesh Consulate.²⁰⁵ Mr. Rana received zero compensation.²⁰⁶ When he asked about his wages, the defendants struck him.²⁰⁷ Mr. Rana alleged that the defendants threatened to beat and kill him if he left the apartment without permission.²⁰⁸ The defendants allegedly confiscated his passport and told the victim that the police would kill him if they found him outside without the document.²⁰⁹ Mr. Islam allegedly claimed that he could kill the victim and “not have to answer to anyone.”²¹⁰ The Court denied the defendants’ motion to dismiss based on consular immunity.²¹¹ The civil case is ongoing.²¹² There is no federal criminal indictment.²¹³

The failure to prosecute these cases is indicative of two phenomena. The first is the general failure to bring single-victim forced labor cases. In 2015, for example, federal prosecutors brought 257 federal trafficking cases.²¹⁴ Of those, only nine involved predominantly forced labor; all the remaining cases involved sex trafficking.²¹⁵ The second phenomenon is a general reluctance to request waivers of immunity.²¹⁶ In the absence of prosecutions, trafficking victims exploited by foreign officials have turned to civil litigation as the only remaining vehicle to obtain accountability.

III. HOLDING STATES ACCOUNTABLE

While civil litigation is playing an increasing role in holding diplomats and international officials accountable, it is not without its flaws. Once a civil judgment is handed down, there is the matter of enforcement—a problem not unique to the United States. This Part explores the creative ways in which advocates are holding diplomats’ sending states and host states accountable.

205. *Id.* at 3.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. Complaint at 10, *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Mar. 21, 2014).

211. Order Denying Motion to Dismiss at 1, *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Jan. 6, 2015).

212. See Civil Docket, *Rana v. Islam*, No. 1:14-cv-01993 (S.D.N.Y. Mar. 21, 2014).

213. A PACER search revealed no corresponding criminal docket for this case.

214. TRAFFICKING IN PERSONS REPORT, *supra* note 109, at 389.

215. *Id.*

216. To date, the State Department has requested a diplomatic waiver in just two domestic worker criminal trafficking cases: *Khobragade* and *Soburun*. See *supra* Part II.A.

A. The Special Problem of Unpaid Default Judgments

Congress has mandated that the Secretary of State “should assist in obtaining payment of final court judgments awarded to A–3 and G–5 visa holders, including encouraging the sending states to provide compensation directly to victims.”²¹⁷ But assistance in enforcing these judgments is extremely rare.

In the United States, there are four outstanding civil judgments against diplomats and foreign officials, totaling \$4,371,540.77 in compensatory and punitive damages.²¹⁸ When faced with outstanding judgments, advocates have had to think creatively. Some advocates have successfully looked to the diplomat’s sending state for redress.

In 2013, the Government of Tanzania agreed to make an *ex gratia* payment to settle a case against a Tanzanian diplomat, five years after the court entered a default judgment.²¹⁹ Ms. Zipora Mazengo filed a federal civil suit in the District of Court of the District of Columbia, alleging that diplomat Alan Mzengi and his wife, Stella Mzengi, trafficked her from Tanzania to the United States for forced labor.²²⁰ Mr. Mzengi was the Minister-Counselor at the Embassy of Tanzania to the United States at the time of the alleged trafficking.²²¹ Ms. Mazengo worked for four years, without pay, in the Mzengi household and for their African food catering business.²²²

Mr. Mzengi raised a diplomatic immunity defense, but failed to prove his diplomatic status.²²³ Following the defendants’ failure to appear, a

217. Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. Law No. 113-235.

218. See Final Judgment, *Ballesteros v. Al-Ali*, No. 1:11-cv-00152 (D.R.I. Dec. 26, 2012) (entering a judgment of \$1,231,800); Order Granting Default Judgment, *Butigan v. Al-Malki*, No. 1:13-cv-00514 (E.D. Va. May 12, 2014) (entering a judgment of \$492,717); Order Granting Default Judgment, *Carazani v. Zegarra*, No. 1:12-cv-00107 (D.D.C. July 3, 2013) (entering a judgment of \$1,188,688.77); Decision and Order, *Gurung v. Malhotra*, No. 1:10-cv-05086 (S.D.N.Y. Mar. 16, 2012) (entering a judgment of \$1,458,335).

219. Press Release, Senator Marco Rubio, Rubio Comments on 2013 Trafficking in Persons Report (June 19, 2013), <http://www.rubio.senate.gov/public/index.cfm/press-releases?ID=599a6fd6-d58d-4e21-9f7d-b3d95c7343ce>.

220. Complaint, *Mazengo v. Mzengi*, No. 1:07-cv-00756 (D.D.C. Apr. 25, 2007).

221. *Id.* at 3.

222. *Id.* at 1, 5–8. Ms. Mazengo suffered extreme verbal, physical, and psychological abuse. *Id.* at 9–10. She was also denied medical care, despite the fact that she suffered ingrown toenails that made it difficult for her to walk or wear shoes. Report and Recommendation at 5–6, *Mazengo v. Mzengi*, No. 1:07-cv-00756 (D.D.C. Dec. 20, 2008).

223. Memorandum Opinion at 5–7, *Mazengo v. Mzengi*, No. 1:07-cv-00756 (D.D.C. Apr. 10, 2008) (“Mr. Mzengi has not offered any affidavit, statement from the Embassy of Tanzania, or documents with his alleged credentials to bolster his claim of immunity, despite his burden to do so.”).

federal judge entered a default judgment against the defendants. The court awarded Ms. Mazengo \$1,059,348.79 in damages,²²⁴ consisting of \$150,000 in punitive damages and \$510,249.21 in compensatory damages and back wages.²²⁵ Succumbing to pressure from the White House and the Department of State, the Government of Tanzania settled the case with an *ex gratia* payment²²⁶ to the victim.²²⁷

This was not the only example of a case that ended with an *ex gratia* payment. Bin Yang, a non-governmental organization based in Germany, obtained an *ex gratia* payment of EUR 23,250 for a domestic worker employed by a Yemeni diplomat.²²⁸

Other cases with default judgments, however, remain unresolved²²⁹:

1. *Carazani v. Zegarra*²³⁰

The District Court of the District of Columbia awarded a Bolivian domestic worker, allegedly trafficked by an administrator for the World Bank,²³¹ \$1,188,688.77 in compensatory and punitive damages.²³² The victim received no compensation for three years of domestic servitude.²³³

Mrs. Mzengi did not raise diplomatic immunity as a defense. Report and Recommendation at 4, *Mazengo v. Mzengi*, No. 1:07-cv-00756 (D.D.C. Dec. 20, 2008).

224. Report and Recommendation at 19, *Mazengo v. Mzengi*, No. 1:07-cv-00756 (D.D.C. Dec. 20, 2008).

225. *Id.*

226. *Ex gratia* payments are voluntary payments that do not result from any liability or legal obligation. BLACK'S LAW DICTIONARY 514 (10th ed. 2014).

227. Dana Milbank, *Tanzania Settles Human Trafficking Case of Former Diplomat to the United States*, WASH. POST (June 21, 2013), <https://www.washingtonpost.com/blogs/post-partisan/wp/2013/06/21/tanzania-settles-human-trafficking-case-of-former-diplomat-to-u-s/>.

228. See KARTUSCH, *supra* note 1, at 43.

229. In most instances, if a judgment is satisfied, either by payment in full or settlement, a notice of satisfaction is filed with the court. This document has not been filed in *Carazani*, *Butigan*, or *Ballesteros*. See Docket, *Carazani v. Zegarra*, No. 1:12-cv-00107 (D.D.C. Jan. 23, 2012); Docket, *Butigan v. Al-Malki*, No. 1:13-cv-00514 (E.D. Va. Apr. 26, 2013); Docket, *Ballesteros v. Al-Ali*, No. 1:11-cv-00152 (D.R.I. Apr. 12, 2011).

230. *Carazani v. Zegarra*, No. 1:12-cv-00107 (D.D.C. Jan. 23, 2012).

231. Under 22 U.S.C. § 288d(a) (2012), employees of international organizations have the same privileges, exemptions, and immunities as are accorded to officers and employees of foreign governments and members of their families. Under § 288d(b), international organization employees and officers are “immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.” This is generally referred to as functional immunity or official acts immunity.

232. Memorandum Opinion at 34, *Carazani v. Zegarra*, No. 1:12-cv-00107 (D.D.C. July 3, 2013).

233. *Id.* Ms. Carazani alleged that the defendant also advertised her services to other potential employers in the neighborhood. *Id.* at 7. She was allowed to keep these wages. *Id.* at 5.

The defendant threatened to deport Ms. Carazani if she ever told anyone that she was not getting paid.²³⁴ The judgment remains outstanding.

2. *Butigan v. Al-Malki*²³⁵

The District Court of the Eastern District of Virginia awarded a Filipina domestic worker, allegedly trafficked by the medical attaché at the Embassy of Qatar and his wife, \$492,717 in compensatory and punitive damages.²³⁶ Ms. Butigan alleged that she worked around the clock for five months, and received just \$1700—approximately 75 cents per hour.²³⁷ The defendants told her that she could not return to the Philippines unless she paid them back for her travel and training expenses.²³⁸ She suffered extensive emotional and verbal abuse, was denied necessary dental care, and slept on the floor.²³⁹ The judgment remains outstanding.

3. *Ballesteros v. Al-Ali*

The District Court of Rhode Island awarded a Filipina domestic worker, allegedly trafficked by a United Arab Emirates naval officer and his wife, \$1,231,800 in compensatory and punitive damages.²⁴⁰ The defendants allegedly forced Ms. Ballesteros into domestic servitude for two-and-a-half months.²⁴¹ Ms. Ballesteros never received payment. Instead, the defendants sent approximately \$410 to her family in the Philippines.²⁴² According to the complaint, Col. Al-Ali warned Ms. Ballesteros against running away stating that he “had the support of the Navy.”²⁴³ The judgment remains outstanding.

234. *Id.* at 5.

235. *Butigan v. Al-Malki*, No. 1:13-cv-00514 (E.D. Va. Apr. 26, 2013).

236. Order and Final Judgment at 1, *Butigan v. Al-Malki*, No. 1:13-cv-00514 (E.D. Va. May 12, 2014).

237. *Id.* at 15–16.

238. *Id.* at 12.

239. *Id.* at 3, 9, 14.

240. Final Order at 4, *Ballesteros v. Al-Ali*, No. 1:11-cv-00152 (D.R.I. Dec. 26, 2012). At the time of the alleged trafficking, Col. Al-Ali, a member of the United Arab Emirates military, was attending the U.S. Naval War College as a graduate student. Press Release, Asian Am. Legal Def. & Educ. Fund, Filipina Immigrant Worker Obtains Default Against Emirati Colonel for Human Trafficking Violations (Aug. 15, 2012), <http://aaldef.org/press-releases/press-release/filipina-immigrant-worker-wins-default-judgment-against-emirati-colonel-for-human-trafficking-violat.html>.

241. Complaint at 2–3, *Ballesteros v. Al-Ali*, No. 1:11-cv-00152 (D.R.I. Apr. 12, 2011).

242. *Id.* at 2

243. *Id.* at 3.

B. Host State Liability

Host states are increasingly being held to task for the failure to provide protections for domestic workers trafficked by diplomats within their borders. Advocates are pursuing litigation in international and regional human rights courts to enforce states' international obligations. The United States is no exception.

In 2007, six domestic workers allegedly trafficked by diplomats filed a petition against the United States with the Inter-American Commission on Human Rights. The petition alleged that the United States violated its obligations under the American Declaration by "failing to adopt special measures of protection against abuse by diplomats."²⁴⁴ Though this case is ongoing, a similar case before the European Court of Human Rights (ECHR) illustrates one possible outcome.

In 2012, the ECHR held that France violated its positive obligations under Article 4 of the European Convention on Human Rights when it failed to put in place a "legislative and administrative framework to effectively combat servitude and forced labour."²⁴⁵ The ECHR ordered damages to the victims in the amount of EUR 30,000.²⁴⁶ The case was filed by two orphaned sisters from Burundi, aged sixteen and ten. The two girls had been trafficked to France by their uncle, a high-level official working at UNESCO, and his wife.²⁴⁷ The victims lived in an unconverted cellar in the basement that contained a boiler, a washing machine, and two beds.²⁴⁸ For four years, the elder victim worked as a housemaid seven days a week. She cared for her cousin, who was disabled, and maintained the garden.²⁴⁹ The victims were physically and verbally harassed by their aunt.²⁵⁰ The elder victim was hospitalized on three occasions after being beaten by a male cousin.²⁵¹ The ECHR held that France's criminal law at the time of the trafficking "did not afford the applicant . . . practical and effective protection against the actions of which she was a victim."²⁵²

244. Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats, Inter-Am. Comm'n H.R., at 74 (Nov. 15, 2007), <http://www.aclu.org/files/womensrights/employ/unworkers/petition.pdf>.

245. C.N. & V. v. France, App. No. 67724/09, ¶ 108, Eur. Ct. H.R. (2012).

246. *Id.* ¶ 121.

247. *Id.* ¶¶ 7–8.

248. *Id.* ¶ 10.

249. *Id.* ¶ 12.

250. *Id.* ¶ 20.

251. *Id.* ¶ 19.

252. *Id.* ¶ 106.

In a separate case, a French Supreme Court for Administrative Matters (*Conseil d'Etat*) ruled that France was liable to pay compensation awarded to a domestic worker trafficked by Oman's former permanent representative to UNESCO.²⁵³ The domestic worker, Ms. Susilawati, had been awarded EUR 33,400 in unpaid wages by a French labour court, but was unable to obtain payment due to the defendant's immunity from execution.²⁵⁴ Ms. Susilawati petitioned the Government of France to pay. France refused.²⁵⁵ The *Conseil d'Etat* ruled that under French administrative law, the state was liable in situations where the application of its international treaty obligations, here the Vienna Convention on Diplomatic Relations, resulted in "special and severe" loss.²⁵⁶

C. International Coordination

The United States is not alone in confronting abuse of domestic workers by diplomats and other foreign officials. The trafficking of domestic workers by diplomats and international officials is a global issue. Indeed, the Organization for Security and Cooperation in Europe (OSCE), a fifty-seven member international organization, convened a series of high-level meetings for Protocol Departments between June 2012 and March 2014 to address these issues.²⁵⁷ Forty-three member states participated in the discussions held in Geneva, Kiev, The Hague, and Brussels.²⁵⁸

Following these meetings, the OSCE published a "Handbook" with extensive information on prevention and enforcement mechanisms adopted by OSCE member states.²⁵⁹ The final document reflected the good practices in states' efforts to combat trafficking of domestic workers. The Handbook provided concrete examples of strategies spearheaded by several OSCE states but applicable in other jurisdictions.²⁶⁰ Strategies included in-person interviews of domestic workers, mandatory transfers of salary to domestic

253. KARTUSCH, *supra* note 1, at 34; see also Elizabeth Bryant, *Virtual Slaves Kept in Europe / Illegal Immigrants Often Abused by Diplomats*, SFGATE (Mar. 14, 2001 4:00 AM), <http://www.sfgate.com/news/article/Virtual-Slaves-Kept-in-Europe-Illegal-2942192.php>.

254. KARTUSCH, *supra* note 1, at 34.

255. Conseil d'État [CE] [highest administrative court], Feb. 11, 2001, No. 325253, Rec. Lebon 36.

256. *Id.*

257. See OSCE *supra* note 1, at 10.

258. *Id.* The meetings were hosted by the Ministries of Foreign Affairs headquartered in each of the respective cities. Attendees included Protocol Department officers and a limited number of non-governmental organizations. One of the authors attended and presented at the meetings in Brussels and The Hague as a representative of the Human Trafficking Pro Bono Legal Center. The dismissal of the Khobragade indictment unfolded while delegates attended the March 2014 meeting in The Hague.

259. *Id.*

260. *Id.* at 9.

workers' bank accounts, distribution of "know your rights" materials, mediation by state authorities to resolve allegations of abuse, declaration of a diplomat as a persona non grata, civil litigation, and referrals for criminal prosecution.²⁶¹

CONCLUSION

The United States has taken some significant steps to end trafficking by foreign officials. But there is still some distance to go. As the cases discussed above illustrate, the *Khobragade* case could have ended much differently. As PJ Crowley, a former U.S. Assistant Secretary of State, pointed out in an article published in 2013, the U.S. "could have declared Ms. Khobragade persona non grata, demanded her immediate departure, and refused further work visas for domestic help for Indian diplomats."²⁶² Alternatively, Khobragade could have negotiated a plea deal and paid criminal restitution to the domestic worker victim, as did most other individuals with functional immunity facing criminal charges of domestic worker abuse.²⁶³ India could have waived Khobragade's immunity, as Mauritius did in the case of its ambassador, allowing the prosecution to proceed.²⁶⁴

But the early analysis seems to indicate that the *Khobragade* case, while highly problematic, has not completely derailed the march toward accountability. It seems likely that India's reaction in the *Khobragade* case will, in hindsight, appear as an unfortunate aberration. India temporarily disrupted the U.S. government's efforts to end the scourge of forced labor in the diplomatic community. But if U.S. efforts are to succeed, a robust policy of prosecution must co-exist with a ramped up prevention strategy. The Department of State has started down the path of prevention, but prosecutions must also increase to deter would-be abusers. And while advocates look forward to a day when there will be no more diplomatic trafficking cases to prosecute or litigate, that day is a long way in the future.

261. *Id.* at 36, 47–49, 51.

262. PJ Crowley, *Devyani Khobragade: Bureaucratic and Diplomatic Negligence*, BBC NEWS (Dec. 18, 2013), <http://www.bbc.com/news/world-us-canada-25440252>.

263. *See supra* Part II.A.

264. Press Release, FBI, Diplomat Fined for Failing to Properly Pay Housekeeper (Nov. 26, 2012), <https://www.fbi.gov/newark/press-releases/2012/diplomat-fined-for-failing-to-properly-pay-housekeeper>.

APPENDIX A: FEDERAL CRIMINAL TRAFFICKING CASES
INVOLVING DIPLOMATS, CONSULAR OFFICIALS,
INTERNATIONAL ORGANIZATION OFFICIALS, MILITARY
OFFICIALS, AND OTHER

Federal Criminal Trafficking Cases Involving Diplomats, Consular Officials, International Organization Officials, Military Officials, and Other (9 cases)			
Countries with 2 Cases			
Country	Case Docket	Sponsoring Organization	Outcome
United Arab Emirates (Egyptian Citizens)	U.S. v. Tolan, No. 11-00536 (E.D. Va filed Nov. 23, 2011)	Embassy of the United Arab Emirates	The defendants fled the jurisdiction and “remain at large.”
United Arab Emirates	U.S. v. Al-Ali, No. 11-00051 (D.R.I. filed Mar. 30, 2011)*	U.S. Naval War College (training)	Defendant acquitted of one count of fraud in foreign labor contracting (18 U.S.C. §1351) and one count of making false statements (18 U.S.C. §1001(a)(2)&(3)).
Countries with 1 Case			
Country	Case Docket	Sponsoring Organization	Outcome
India	U.S. v. Khobragade, No. 13-MAG-2870 (S.D.N.Y. filed Dec. 11, 2013) [closed Jan. 9, 2014] U.S. v. Khobragade,	Permanent Mission of India to the United Nations (originally Consulate General of India)	The indictment was dismissed on diplomatic immunity grounds. An indictment re-issued after Ms. Khobragade left the United States. This case is ongoing.

* Indicates corresponding federal civil case.

	No.1:14-cr-00008-SAS (S.D.N.Y. filed Jan. 9, 2014) [closed Mar. 12, 2014] U.S. v. Khobragade, No. 1:14-cr-00176-WHP (S.D.N.Y. filed Mar. 14, 2014)		
Italy	U.S. v. Penzato, No. 12-00089 (N.D. Cal filed Feb. 9, 2012)*	Consulate General of Italy	Defendants pled guilty to a misdemeanor charge of conspiring to possess an illegal identification document. Both were sentenced to five years probation and paid \$13,000 in restitution to the victim.
Mauritius	U.S. v. Soborun, No. 12-03121 (D.N.J. filed Sept. 7, 2012)	Embassy of Mauritius	The Government of Mauritius waived the defendant's immunity. Mr. Soborun pled guilty to failing to pay the minimum wage rate and paid a \$5,000 fine and \$24,153 in criminal restitution (back wages) to the victim.

Morocco	U.S. v. Amal, Nos. 14-151; 14-152 (E.D. Va filed Mar. 4, 2014)*	Embassy of Morocco	Defendants pled guilty to alien harboring and paid \$52,700 in restitution. Mr. Amal was sentenced to three years of probation. Mrs. Amal was sentenced to three months home confinement and two years probation.
Qatar	United States v. Al Homoud, No. 15-00391 (W.D. Tex. filed Jun. 1, 2015)	Camp Bullis Military Training Reservation (training)	Mr. Al-Homoud pled guilty to visa fraud. Ms. Al-Hosani pled guilty of failing to report knowledge of a felony. They were sentenced to five and three five years supervised released probation, respectively, and immediate removal from the United States. The court also ordered restitution in the amount of \$120,000 to the victims.
Taiwan	U.S. v. Liu, No. 11-00284 (W.D. Mo. filed Nov. 18, 2011)	Taipei Economic and Cultural Office	Defendant pled guilty to fraud in foreign labor contracting (18 USC §1351). Ms. Liu paid \$80,044.62 in

			restitution to the victim and an \$11,040 fine for costs associated with her time served and transportation costs associated with her deportation.
Tanzania	U.S. v. Bakilana, No. 10-00093 (E.D. Va filed Mar. 29, 2010)*	World Bank Group	Ms. Bakilana pled guilty to two counts of making false statements to federal authorities and paid restitution to the victim in the amount of \$41,626.80.

**APPENDIX B: FEDERAL CIVIL TRAFFICKING CASES INVOLVING
DIPLOMATS, CONSULAR OFFICIALS, INTERNATIONAL
ORGANIZATION OFFICIALS, MILITARY OFFICIALS, AND OTHER**

Federal Civil Trafficking Cases Involving Diplomats, Consular Officials, International Organization Officials, Military Officials, and Other (28 cases)			
Countries with 3 Cases			
Country	Case Docket	Status	Outcome
Kuwait	Swarna v. Al Awadi, No. 06-cv-04880 (S.D.N.Y. filed June 23, 2006)	Permanent Mission of Kuwait to the United Nations	Settled
Kuwait	Sabbithi v. Al Saleh, No. 07-cv-115 (D.D.C. filed Jan. 18, 2007)	Embassy of Kuwait	Settled
Kuwait	Leo v. Al Naser, No. 08-cv-01263 (D.D.C. filed July 22, 2008)	Embassy of Kuwait	Settled
Countries with 2 Cases			
Country	Case Docket	Status	Outcome
India	Gurung v. Malhotra, No. 10-cv-5086 (S.D.N.Y. filed July 1, 2010)	Consulate General of India	Default judgment for plaintiff in the amount of \$1,458,335 (unpaid)
India	Bhardwaj v. Dayal, No. 11-cv-04170 (S.D.N.Y. June 20, 2011)	Consulate General of India	Settled
Morocco	Doe v. Amal, No. 12-cv-1359 (E.D. Va. filed Nov. 27, 2012)*	Embassy of Morocco	Settled

* Indicates a corresponding federal criminal case.

Morocco	Laamime v. Abouzaid, No. 13-cv-00793 (E.D. Va. filed June 27, 2013)	International Finance Corporation (a member of the World Bank Group)	Settled
Peru	Villarreal v. Tenorio, No. 11-cv-2147 (D. Md. Filed Aug. 9, 2011)	Embassy of Peru	Dismissed (not voluntarily) on diplomatic immunity grounds
Peru	Rios Fun v. Pulgar, No. 13-cv-03679 (D.N.J. filed June 13, 2013)	Permanent Mission of Peru to the United Nations	Dismissed (not voluntarily) on diplomatic immunity grounds, but without prejudice
Philippines	Baoanan v. Baja, No. 08-cv-05692 (S.D.N.Y. June 24, 2008)	Permanent Mission of the Philippines to the United Nations	Settled
Philippines	Cruz v. Maypa, No. 13-cv-00862 (E.D. Va. filed July 16, 2013)	World Bank	Settled in the amount of \$140,000
Qatar	Judavar v. Al Mannai, No. 11-cv-00625 (D.D.C. filed Mar. 25, 2011)	Embassy of Qatar	Dismissed (voluntarily)
Qatar	Butigan v. Al Malki, No. 13-cv-00514 (E.D. Va. filed Apr. 26, 2013)	Embassy of Qatar	Default judgment for the plaintiff in the amount of \$492,717 (unpaid)

Tanzania	Mazengo v. Mzengi, No. 07-cv-756 (D.D.C. filed Apr. 25, 2007)	Embassy of Tanzania	Default judgment for the plaintiff in the amount of \$1,059,348.79. The Government of Tanzania settled the case with an <i>ex gratia</i> payment.
Tanzania	Kiwanuka v. Bakilana, No. 10-cv-01336 (D.D.C. filed Aug. 9, 2010)*	World Bank Group	Settled
Countries with 1 Case			
Country	Case Docket	Status	Outcome
Bangladesh	Rana v. Islam, No. 14-cv-1993 (S.D.N.Y. filed Mar. 21, 2014)	Consulate General of Bangladesh	Ongoing
Bolivia and Germany (dual citizen)	Carazani v. Zegarra, No. 12-cv-107 (D.D.C. filed Jan. 23, 2012)	World Bank	Default judgment for the plaintiff in the amount of \$1,188,688.77 (unpaid)
Burkina Faso	Ouedraogo v. Bonkougou, No. 15-cv-01345 (S.D.N.Y. filed Feb. 24, 2015)	Permanent Mission of Burkina Faso to the United Nations	Dismissed (voluntarily)
Cameroon	Elat v. Ngoubene, No. 11-cv-2931 (D. Md. file Oct. 13, 2011)	Embassy of Cameroon	Dismissed (voluntarily)
Indonesia	Arma v. Prakoso, No. 14-cv-03113 (D. Md. filed Oct. 2, 2014)	Embassy of Indonesia	Dismissed (voluntarily)
Italy	Doe v. Penzato, No. 10-cv-5154 (N.D.	Consulate General of Italy	Settled

	Cal. filed Nov. 12, 2012)*		
Ethiopia	Chere v. Taye, No. 04-cv-06264 (D.N.J. filed Dec. 21, 2004)	United Nations Development Program	Settled
Kenya	Oluoch v. Orina, No. 11-cv-3117 (S.D.N.Y. filed May 6, 2011)	Permanent Mission of the Republic of Kenya to the United Nations	Ongoing
Malawi	Lipenga v. Kambalame, No. 14-cv-03980 (D. Md. filed Dec. 19, 2014)	Embassy of the Republic of Malawi	Ongoing
Pakistan	Hussain v. Shaukat, No. 16-cv-322 (E.D. Va. filed Mar. 22, 2016)	Embassy of Pakistan	Ongoing
Sudan	Doe v. Siddig, No. 10-cv-01256 (D.D.C. filed July 26, 2010)	Embassy of Sudan	Settled
Uganda	Waru v. Madhvani, No. 05-cv-00662 (D.D.C. filed Apr. 1, 2005)	Embassy of Uganda	Settled
United Arab Emirates	Ballesteros v. Al-Ali, No. 11-cv-00152 (D.R.I. filed Apr. 12, 2011)*	U.S. Naval War College (training)	Default judgment for the plaintiff in the amount of \$1,231,800 (unpaid)